IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

TRC.No. 366 of 2002
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R.P.NO.26/2001 IN TA.566/2000 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, THIRUVANANTHAPURAM.

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PETITIONER/REVENUE/RESPONDENT:
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STATE OF KERALA REPRESENTED BY
DEPUTY COMMISSIONER (LAW) COMMERCIAL TAXES,
ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) MR.V.V.ASOKAN

RESPONDENT/ASSESSEE/APPELLANT:
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V. SANAL KUMAR, VISWANATHA PANICKER
TRADERS, BALARAMAPURAM.

BY ADV. SRI.JOSE JOSEPH

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L.DATTU, C.J. & K.T.SANKARAN, J.**

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**T.R.C.No.366 of 2002**

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Dated, this the 26th day of June, 2007

**ORDER**

**K.T.Sankaran, J.**

By the assessment order dated 21.12.1999 the assessee was assessed to tax and penal interest was also imposed by the assessing authority. The assessee filed appeal before the Appellate Assistant Commissioner, Commercial Taxes, Thiruvananthapuram. In the order dated 30.11.2000, the first appellate authority held thus:

> "As regards the additional ground raised, I hold that the question of levy of penal interest and compounding fee cannot be raised as a subject matter of appeal as the orders pertaining to such levy are not appealable under sec.34 of the KGST Act, 1963."

2. The assessee filed appeal to the Tribunal which was dismissed. Thereafter on the application filed by the assessee, an order dated 3rd May, 2001 was passed by the Appellate Tribunal in Rectification Petition No.26 of 2001. In the rectification order the Tribunal held that the order passed by the assessing authority is a composite one and therefore, that order is appealable not only against the order of assessment but also against the order by which penal interest was levied. The revenue challenges the rectification order in this Tax Revision Case.

3. Learned counsel appearing for the respondent submits that the matter is covered by the decision of this Court in **The Thadikkadavu Service Co-operative Bank Ltd.** v. **State of Kerala** [(2005) 13 KTR 54], wherein it is held as follows:

> "6. One more question is raised in these two revisions. It is with regard to the levy of interest under section 23(3) of the

> Act. Learned counsel for the assessee submitted that the assessee had not admitted any liability in respect of the agency transaction in the returns filed by it. The counsel also submitted that no demand was also raised by the assessing authority for penal interest prior to the passing of the assessment orders. Counsel on that base submitted that in view of the decision of the Supreme Court in Maruti Wire Industrial Pvt. Ltd. v. Sales Tax Officer, First Circle, Mattancherry and others (2001) 122 STC 410 penal interest under section 23(3) cannot be levied for the period prior to the demand made pursuant to the assessment orders under challenge. We find that the Tribunal did not consider this claim on the ground that no appeal will lie against an order levying penal interest, we do not agree with the said view of the Tribunal. In the instant case as already noted, the assessee had filed appeal against the assessment order relating to other matters also. Further, penal interest is levied in the assessment order itself. In view of the above, the assessee is entitled to challenge the levy of penal interest when an appeal is filed against the assessment order on other matters also."

4. In view of the above decision in **The Thadikkadavu Service Co-operative Bank** case, we are of the view that the appellate Tribunal was justified in passing the rectification order holding that the appeal filed before the appellate authority was maintainable and was right in remanding the matter to the first appellate authority for fresh consideration. The rectification order does not call for interference.

The Tax Revision Case is accordingly dismissed.

(**H.L.DATTU)**
**CHIEF JUSTICE**

**(K.T.SANKARAN)**
**JUDGE**

vns